

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

PUTNAM GENERAL HOSPITAL

Employer

and

Case 9-RC-17523

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, ^{1/} the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

^{1/} The Employer and the Petitioner have timely filed briefs which I have carefully considered in reaching my decision.

5. The Employer, a corporation, is engaged in the operation of an acute care hospital in Hurricane, West Virginia and in providing medical and health care services at a number of other locations in West Virginia. The Employer currently employs approximately 114 registered nurses (hereinafter RNs) in the unit found appropriate.^{2/} There is no history of collective bargaining affecting any of the employees involved in this proceeding.

The Petitioner seeks to represent a unit comprised of all full-time and regular part-time RNs employed by the Employer in its Hospital and who work at the Doctors Park Medical facility in Hurricane, West Virginia. Contrary to the Petitioner, the Employer asserts that the unit must include, in addition to the employees sought by the Petitioner, all RNs employed by the Employer who work at the Toyota manufacturing plant in Buffalo, West Virginia. Additionally, the Employer, contrary to the Petitioner, maintains that Patsy Hanson, the PACU coordinator, must be excluded from the unit as a supervisor within the meaning of Section 2(11) of the Act. Finally, the Petitioner has expressed a willingness to proceed to an election in any unit found appropriate.

The parties stipulated that the Employer's hospital in Hurricane, West Virginia is an acute care medical facility and I find that the Employer is a health care institution within the meaning of Section 2(14) of the Act. Accordingly, the Board's Final Rule (the Rule) on collective-bargaining units in health care institutions is applicable to this acute care hospital. See, 29 CFR 103 (1980), 284 NLRB 1580 (1989), approved the Supreme Court in *American Hospital Assn. v. NLRB*, 499 U.S. 606 (1991). Under the Rule, the RN unit sought by the Petitioner is appropriate for collective-bargaining purposes.

The hospital offers a full range of medical care. The Chief Executive Officer (CEO), Patsy Hardy, is in overall charge of the facility and is responsible to the Employer's Board of Directors. Reporting to Hardy are: Chief Financial Officer Wanda Moore, Director of Operations Frank Kirby, Director of Human Resources Kim Oldaker, Ethics and Compliance Officer Nancy Sullivan, Director of Rehab Services Jeff Goode, Quality Improvement Director Sue Ellis, and Chief Nursing Officer Sue Ann Painter. All the hospital RNs are ultimately responsible to Painter. In addition, Lynn Clay, supervisor of the RNs who work at the Doctors Park facility, located about .4 miles from the hospital, and Lois Fauber, supervisor of RNs assigned to the Toyota Plant, located about 15 miles from the hospital, report directly to Hardy.

Working directly under Painter at the hospital are Director of Emergency Services Tammy Hiles, Director of the Intensive Care Unit (ICU) Robin Lewis, Director of Telemetry William Parker, Director of Women's Services Jo Ellen Perry, Director of Surgical Services Barbara Neil, and House Supervisors Raynette Daniels, Wanda Marks and Tom Mollett. Additionally, a Director of Medical Surgical Services reports to Painter, but that position is now vacant as is a fourth house supervisor position. The house supervisors are in charge of the hospital when no directors are at the facility and employees calling off as well as all other emergencies would be reported to them. The parties are in agreement that the house supervisors

^{2/} The number of RNs was estimated at between 85 and 114, but the precise number included will depend on the number of part-time RNs eligible to vote under the agreed upon eligibility formula.

are supervisors within the meaning of the Act. The medical surgical area has two RN shift coordinators and the telemetry area has three shift coordinators. The parties stipulated that the shift coordinators are properly included in the unit.

The PACU Coordinator:

Contrary to the Petitioner, the Employer seeks to exclude the PACU coordinator, Patsy Hanson, from the unit as a statutory supervisor. Director of Surgical Services Barbara Neil, an RN, is responsible for the operating rooms, outpatient surgery, the Post Anesthesia Care Unit or PACU and the Inventory and Central Sterile department. Neil directly oversees the operating rooms which employ 10 RNs, 10 surgical technicians, 2 transporters and 1 department secretary. Neil is also in charge of outpatient surgery which employs three RNs and one unit clerk, and Central Sterile, where the central sterile coordinator, RN David Taylor, directly oversees two central sterile technicians and the inventory department. The parties stipulated that Taylor is a supervisor within the meaning of the Act. Finally, Neil is ultimately responsible for PACU, which employs RN coordinator, Patsy Hanson, two staff RNs and three PRNs.

Hanson has worked in the PACU for 17 years and has been designated the coordinator since 1990. Like Taylor, Hanson is at Grade 59 on the Employer's pay scale while staff RNs are Grade 57 and the shift coordinators are Grade 58. The starting pay for Grade 59 is 84 cents more than that of staff nurses, Grade 57. Hanson currently earns approximately \$2 more per hour than the highest paid staff RN.

Hanson is responsible for ordering supplies, overseeing patient care and preparing schedules for the nurses in the PACU. For example, Hanson prepares a monthly schedule for the RNs in PACU. In preparing the schedule, Hanson determines which of the RNs will be working the two daytime (7 a.m. to 3 p.m.) shifts each day, who will work the 11 a.m. to 7 p.m. shift and who will be on call for the rest of the 24-hour period. Hanson prepares the schedule using her own independent judgment. Although the RNs, including Hanson, have regular assignments, Hanson adjusts the schedule for requested vacations and other preferences among the RNs in the PACU. Employees must request vacation from Hanson, who then schedules other employees to fill in using her own discretion. Hanson is responsible for determining which PRN nurses will work, and her decision in this regard affects the Employer's cost because the PRNs have varying pay scales. Hanson can release employees to go home early or request that they work overtime.

Approximately a year ago, the Employer added another operating room and Hanson informed her supervisor that they would need to hire another RN in order to meet legal nursing code standards. Her recommendation was followed and a job was posted. Two RNs working in other departments applied for the position. RN Judy Tumbler was offered the job based upon Hanson's recommendation. In December 2000, a PACU full-time nurse quit and Hanson recommended that traveler RN Marilyn Parkins be offered the job. Based solely on Hanson's recommendation Parkins was offered and accepted a position in the PACU.

Finally, Hanson assists in the preparation of employee evaluations. She assigns numerical codes of 1, 2 or 3 to various clinical competencies components used as part of the evaluations. The previous Director of Surgical Services, Jeff Fleck, was not an RN and accordingly, he could

not complete the clinical portions of the evaluation, which had to be done by an RN. However, Hanson had also completed and signed off on the clinical competencies when she was supervised by an RN. The evaluations are used to determine the amount of employee raises.

Section 2(11) of the Act defines a supervisor as a person:

. . . having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively recommend such action, if in connection with the foregoing, the exercise of such authority is not merely of a routine or clerical nature, but requires the use of independent judgment. . . .

It must be noted, however, that in enacting Section 2(11) of the Act, Congress emphasized its intention that only supervisory personnel vested with “genuine management prerogatives” should be considered supervisors, and not “straw bosses, leadmen, set-up men and other minor supervisory employees.” *Chicago Metallic Corp.*, 273 NLRB 1677, 1688 (1985). Although the possession of any one of the indicia specified in Section 2(11) of the Act is sufficient to confer supervisory status, such authority must be exercised with independent judgment and not in a routine manner. *Hydro Conduit Corp.*, 254 NLRB 433, 437 (1981). Thus, the exercise of “supervisory authority” in merely a routine, clerical, perfunctory or sporadic manner does not confer supervisory status. *Feralloy West Corp. and Pohng Steel America*, 277 NLRB 1083, 1084 (1985); *Chicago Metallic Corp.*, supra; *Advanced Mining Group*, 260 NLRB 486, 507 (1982). Moreover, it is well established Board law that the burden of proving that an individual is a supervisor rests on the party asserting supervisory status. See, *Beverly Enterprises-Ohio d/b/a Northcrest Nursing Home*, 313 NLRB 491 (1993); *Ohio Masonic Home*, 295 NLRB 390, 393 (1989).

Hanson is responsible, using independent judgment, for preparing the monthly schedules for RNs in PACU and for assigning employees when changes are necessary. Hanson also has the authority, which she has exercised, to effectively recommend the hire of employees. Hanson is involved in evaluating employees and must sign off on critical parts of the evaluations which are used to determine employees’ wage increases. Additionally, Hanson is paid at the same rate as other stipulated supervisors and it appears from the record that she is employed in a similar position and exercises the same authority as at least one other admitted supervisor.

Based on the foregoing, the record as a whole, and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that Hanson is a supervisor within the meaning of Section 2(11) of the Act. In reaching this decision, I note that Hanson independently rates employees in their evaluations and schedules and assigns employees using independent judgment. Hanson also has the authority to effectively recommend the hire of employees. Such indicia confers supervisory status. See, e.g., *Rhode Island Hospital*, 313 NLRB 343, 348 (1993). Moreover, the fact that she supervises a relatively small number of employees is irrelevant as supervision of only one employee is sufficient if any of the supervisory indicia described in Section 2(11) of the Act are met. *Opelika Foundry*, 281 NLRB 897, 899 (1986); *Jack Holland & Son*, 237 NLRB 263, 265 (1978). Finally, I note that the Petitioner has not cited any authority

in support of its position that Hanson is not a supervisor. Accordingly, I shall exclude Patsy Hanson from the unit as a supervisor within the meaning of Section 2(11) of the Act.

Appropriate Unit:

The Employer has a contract to provide emergency medical and employee health services for employees of the Toyota engine plant. The Toyota Plant commenced operations approximately 3 years ago and is located 15 miles from the hospital. An RN supervisor, one full-time RN and four RNs employed in PRN positions staff a small trauma room at the Toyota plant, where they provide services similar to those provided in the fast track emergency setting at the hospital. The Toyota RNs also perform employee health functions like blood pressure checks, physical examinations and health education. Additionally, Toyota employees often receive similar care at the hospital and the hospital's rehab center.

The supervisor for the Toyota RNs, Lois Fauber, reports directly to CEO Patsy Hardy as does the supervisor for the RNs at Doctors Park, Lynn Clay. The Toyota RNs were hired through the hospital's human resources department, are subject to the hospital pay scale, benefits, vacation and time off plans, and receive their initial orientation and certain annual competency training at the hospital. The payroll for the employees assigned to the Toyota plant is approved by CNO Sue Painter or CEO Patsy Hardy.

All Toyota RN positions were initially posted at the hospital to be filled internally. Fauber and two of the RNs in PRN positions, Amy Black and Cathy Hager, initially worked at the hospital and transferred to the Toyota Plant as a result of internal bids. During Toyota's twice-yearly week long shutdowns, the Toyota RNs may volunteer to work at the hospital to make up for lost hours but none have done so after their first year at Toyota. Two hospital nurses, Marty Blankenship and Susie Pauley, work on occasion at Toyota. However, it is not clear from the record how frequently they have done so. Supervisor Fauber has taught classes at the hospital and the Toyota employees are eligible to bid as internal candidates for jobs posted in the hospital. It appears from the record that there is minimal temporary interchange between the hospital RNs and those assigned to the Toyota plant and little, if any, daily contact by the two groups of employees.

Like the Toyota nurses, RNs working at the Doctors Park auxiliary facility, whom both parties agree are properly included in the unit, are supervised by an RN supervisor who reports directly to the CEO. The Doctors Park facility, located about .4 miles from the hospital, provides office space where doctors see patients. Like the Toyota RNs, it does not appear from the record that there is any regular interchange between the hospital RNs and those assigned to the Doctors Park facility.

The Board has long applied a presumption that employees sharing a community of interests at a single facility constitute an appropriate unit for collective bargaining even where an employer maintains other facilities that employ similarly classified employees. *J & L Plate, Inc.*, 310 NLRB 429 (1993); *Penn Color, Inc.*, 249 NLRB 1117 (1980); *Dixie Bell Mills*, 139 NLRB 629, 631 (1962); *Tempco Aircraft Corp.*, 121 NLRB 1085 (1958). The party seeking to challenge this presumption may rebut it by presenting sufficient evidence to show that the single

facility has been effectively merged into a more comprehensive unit or is so functionally integrated that it has lost its separate identity. *J & L Plate, Inc.*, supra; *Red Lobster*, 300 NLRB 908, 910, 911 (1990). The Board has applied the same rebuttable presumption in the health care industry. *Samaritan Health Services, Inc.*, 238 NLRB 629, 632 (1978); *National G. South, Inc.*, 230 NLRB 976, 978 fn. 5 (1978); *Manor Healthcare Corp.*, 285 NLRB 224 (1987).

Although a single facility unit in the health care industry is presumptively appropriate, such presumption is not applicable in the subject case. Here, the Employer operates only one facility, involved in this proceeding, i.e., the acute care hospital. The Toyota RNs, like those at Doctors Park, are employed by the hospital and are merely assigned to work at a separate location. Indeed, the RNs assigned to Toyota do not work in a separate Employer facility, but are assigned to work in a facility owned by a separate employer with whom the Employer has a contract to provide health care services. Thus, I must determine whether the Toyota RNs may be excluded from the unit utilizing the Board's community of interest criteria.

Although the Toyota RNs have separate immediate supervision and there does not appear to be any daily interchange of employees between the Toyota plant and the hospital, the same is true of the RNs assigned to Doctors Park whom the parties agree are properly included in the unit. Moreover, the Toyota RNs are hired through the hospital's human resources department, are carried on the hospital's payroll records, are subject to the hospital pay scale, benefits and vacation schedule and receive orientation and competency training at the hospital. All RN positions for the Toyota plant are posted at the hospital and a number of vacancies at Toyota have been filled by hospital RNs through the bid procedure. Finally, RNs at Toyota may work at the hospital during annual shutdowns of the Toyota plant and employees at the hospital occasionally work at Toyota.

In *Montefiore Hospital and Medical Center*, 261 NLRB 569 (1982), where the union sought more than a single facility unit, but not employee wide, the Board, taking into account the labor organization's willingness to proceed to an election in any unit found appropriate, found that the only appropriate unit must encompass the employees at all locations either party would include. Although *Montefiore* involved a multi-facility unit issue, the *Montefiore* rationale is, a *fortiori*, applicable to the subject case, where the Petitioner seeks to include the hospital RNs as well as those employed at Doctors Park, but seeks to exclude almost identical RNs assigned to the Toyota plant.^{3/} The Petitioner has not cited any precedent in its brief for excluding the RNs assigned to the Toyota plant and the record does not establish any basis for distinguishing the RNs at Toyota from those at Doctors Park. Moreover, there is no basis for finding that the RNs employed at Toyota constitute a separate appropriate unit. Finally, the Petitioner expressed a willingness to proceed to an election in an overall unit including the Toyota RNs.

Based on the foregoing, the entire record and careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the RNs assigned to Toyota share a sufficient

^{3/} The Toyota plant is about 15 miles from the hospital and Doctors Park is less than a mile from the hospital. The difference in the geographic distance between the hospital and the Toyota plant and Doctors Park standing alone is not a sufficient basis for treating the employees at Toyota and Doctors Park differently.

community of interest with the other hospital RNs and like the RNs at Doctors Park must be included in the unit. Accordingly, I shall include the RNs at Toyota in the unit.

The PRNs (As Needed Employees):

The parties stipulated that the voting eligibility of its on-call/PRN registered nurses should be determined by application of the Board's traditional eligibility formula. The Board's eligibility formula, established in *Davison-Paxon Company*, 185 NLRB 21 (1970), and agreed to by the parties, provides that on-call employees who regularly work an average of 4 hours or more per week for the last quarter prior to the eligibility date share a sufficient community of interest with the regular employees to warrant their inclusion in the unit and are, therefore, eligible to vote. Accordingly, in accordance with the stipulation of the parties, and the record evidence,

I find that the Employer's on-call/PRN registered nurses who regularly worked an average of 4 hours or more per week in the unit found appropriate for the last quarter period to the eligibility date are eligible to vote.

The Education Coordinator:

The parties were unable to agree on the unit placement of Education Coordinator Marty Blankenship. However, the parties agreed that should Blankenship appear at the polls to vote that she may cast a ballot subject to challenge. Accordingly, I find that Blankenship may vote subject to challenge and instruct my agent conducting the election to challenge her ballot if she appears at the polls to vote.

Stipulated Supervisors:

The parties stipulated and the record shows that Patsy Hardy, chief executive officer; Sue Painter, chief nursing officer; Rhonda Moore, chief financial officer; Fred Kirby, director of operations; Kim Oldaker, director of human resources; Nancy Sullivan, ethics compliance officer; Sue Ellis, quality improvement director; Jeff Goode, director of rehabilitation; Tammy Hiles, director of emergency services; Robin Lewis, director of ICU; William Parker, director of telemetry; Jo Ellen Perry, director of women's services; Barb Neal, director of surgical services; House Supervisors Raynette Davis, Wanda Marks, and Tom Mollett; Lynn Clay, supervisor of Doctors Park; Lois Fauber, supervisor at the Toyota Plant; Dave Taylor, central sterile coordinator and the director of medical/surgical, which is currently unfilled, have authority to hire, discharge or discipline employees or direct work in a manner requiring the use of independent judgment and are supervisors within the meaning of Section 2(11) of the Act. Accordingly, I shall exclude them from the unit. ^{4/}

^{4/} Petitioner, in its brief, contended that staff nurses who perform as nursing supervisors on a part-time basis should be excluded from the unit. Sporadic substitution for a supervisor does not warrant a supervisory finding. *Aladdin Hotel*, 270 NLRB 838 (1984). See also: *Billows Electric Supply*, 311 NLRB 878 (1993). As the record does not indicate that any staff nurses substitute for supervisors other than on a sporadic basis, I shall include them in the unit.

Based on the foregoing, the record as a whole and after careful consideration of the arguments of the parties at the hearing and in their briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time registered nurses, including the RNs who work at Doctors Park and the Toyota plant, employed by the Employer at and out of its Hurricane, West Virginia facility, excluding all other employees and all guards and supervisors, as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Section 103.20 of the Board's Rules and Regulations require that the Employer shall post copies of the Board's official notice of election in conspicuous places at least three (3) working days prior to 12:01 a.m. on the day of the election. The term "working day" shall mean a full 24-hour period excluding Saturdays, Sundays and holidays. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, and with respect to on-call/PRN employees meet the requirements of the eligibility formula set forth in the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Steelworkers of America, AFL-CIO-CLC**.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election subject to the Petitioner's submission of an adequate showing of

interest. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **May 8, 2001**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **May 15, 2001**.

Dated at Cincinnati, Ohio this 1st day of May 2001.

/s/ Richard L. Ahearn

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